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Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Whether 138.73 Acres of Land
Located in the Town of Wauzeka, Crawford
County, and Owned by Clarence J. Teynor Shall be
Withdrawn as Forest Cropland

Case No.: IH-99-13

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Department of Natural Resources on its own motion investigated and requested a hearing to determine whether the above 138.73 acres in Township 7 North, Range 5 West, Section 11 SENW, NESE, and N ½ of SESE, and Section 15 NWNE, Town of Wauzeka, Crawford County should continue as Forest Cropland under sec. 77.02, Stats.

Pursuant to due notice hearing was held on February 7, 2000, at Prairie du Chien, Wisconsin before Jeffrey D. Boldt, administrative law judge (the ALJ). Despite signing receipt of certified delivery of the hearing notice on December 28, 1999, Mr. Clarence Teynor did not appear at the hearing. In accordance with sec. NR 2.09(3)(b), Wis. Admin. Code, the ALJ took testimony and hereby issues the order set forth below.

In the hearing notice, the Department alleged the following:

1. That Mr. Teynor has cut timber on land where the forest tax was delinquent in violation of sec. 77.06(1), Stats; and
2. That Mr. Teynor has cut timber and failed to file a cutting notice or cutting report or both in violation of sec. 77.06(1) and (4), Stats. The Department alleges that these actions, which constitute cutting in excess of prescribed amounts, constitute intentional, continual violations of sec. 77.06(1) and (4), Stats., and render the designation of this land as Forest Croplands subject to cancellation under sections 77.06(1) and 77.10(1), Stats.

However, at hearing, the DNR withdrew the first allegation. Accordingly, the sole issue for hearing was whether the DNR demonstrated the second allegation by a preponderance of the evidence.

In accordance with sec. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Department of Natural Resources, by

Attorney Edwina Kavanaugh
P. O. Box 7921
Madison, WI 53707-7921

Clarence Teynor (In Absentia)

FINDINGS OF FACT

1. Upon application for entry dated October 24, 1956 by owner William G. Price, R.R. 2, Gays Mills, Wisconsin, the Department issued Order No. FC 1399 on February 8, 1957, designating the described land as Forest Cropland effective for the year 1957 pursuant to sec. 77.02(3), 1957 Wis. Stats.

2. On April 25, 1969, Mrs. Price conveyed the above land to Clarence J. Teynor, Route 1, W120 Rhein Hollow Rd., Wauzeka, WI 53826. On September 4, 1970, Mr. Teynor submitted a signed Acceptance of Transfer acknowledging that these lands would continue as Forest Croplands and stating that he intended to practice forestry on these lands.

3. On September 30, 1970, the Department issued a Notice of Transfer, Transfer Order No. T-542. This Order officially recognized that Mr. Teynor had now entered the following lands under the Forest Crop Law:

Township 7, Range 5 West
Section 11 – SENW, NESE, W ½ SESE
Section 15 – NWNE

4. On February 23, 1988, DNR Forester Adrian Hagen prepared a management plan for this land that recommended the minimal practices that the Department would consider necessary to constitute sound forestry.

5. There have been repeated problems with Mr. Teynor following Forest Cropland procedures during the period since his acceptance of the Transfer of Ownership in September, 1970. (See: Exs. 11-39) Mr. Teynor has failed to file a timely cutting notice (Exs. 13 and 34), failed to file cutting reports (Exs. 14-18), and failed to pay severance taxes until taken to court (Exs. 20-25; 30).

6. The DNR proved at hearing, that in addition to the above-described lack of compliance with FCL rules, Mr. Teynor has done substantial harvesting of timber in areas in which he has given no notice of cutting and paid no severance tax. (Harden) Specifically, DNR

Forester Gary Harden and local DNR Conservation Warden Dennis Kirschbaum inspected the property on or about April 14, 1998. At the site, they observed evidence of cutting of trees on FCL lands. The observed stands of trees did not reflect the volumes of trees as identified in the forest management plan for the Teynor property (Ex. 39). Several stands of trees had clearly been thinned in areas for which no cutting notice had been given and no severance taxes paid. For example, Stand One in Section 11 stated that there was 4700 board feet of saw timber in 1987. The site inspection revealed that this was no longer true in April, 1998. (Harden)

The record was clear that, during the period of 1988-98, Mr. Teynor had made at least 2 and as many as 3 unreported cuttings in the above-described FCL lands which had never been noticed and for which no severance taxes have been paid. (Harden; Exs. 40-42)

7. Under these circumstances, the DNR has proven by a preponderance of the evidence that Mr. Teynor has cut timber and failed to file a cutting notice or cutting report in violation of sec. 77.06(1) and (4), Stats.

Further, these actions constitute cutting in excess of prescribed amounts and are, accordingly, intentional violations of sec. 77.06(1) and (4), Stats. It is therefore appropriate to issue an Order withdrawing the above-described lands from the FCL program.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and enter necessary Orders relating to withdrawal of Forest Croplands pursuant to secs. 227.43 and 77.10, Stats.

2. The respondent has failed to file a cutting notice or cutting report within the meaning of sec. 77.06(1) and (4), Stats.

The respondent has intentionally and continually violated said statutes and rendered the designation of the FCL land subject to withdrawal under sec. 77.10 (Stats.)

3. The Division and the DNR have authority pursuant to sec. 77.10(1)(a), Stats., to issue an Order withdrawing lands from entry under Forest Crop Law if said lands are not meeting requirements of sec. 77.06, Stats.

ORDER

Pursuant to the foregoing Findings of Fact, Conclusions of Law NOW IT IS HEREBY ORDERED that the lands described above owned by Clarence J. Teynor be and the same are hereby withdrawn from entry under the Forest Crop Law.

IT IS FURTHER ORDERED that the tax due by the owner (as determined by the Wisconsin Department of Revenue) and interest thereon shall be paid to the Department of Natural Resources pursuant to sec. 77.10(1)(a), Stats.

IT IS FURTHER ORDERED that a copy hereof be transmitted forthwith by the Department of Natural Resources to the Wisconsin Department of Revenue, to the Clerk of the Town of Wauzeka, to the Register of Deeds of Crawford County and the Supervisor of Assessments of the property tax assessment district wherein the land is located.

Dated at Madison, Wisconsin on February 25, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: Jeffrey D. Boldt
JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.